

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
26 October 1994

Case T-21/93

N

v

**Commission of the European Communities**

(Officials – Duties – False declaration – Disciplinary measure – Disciplinary Board – Downgrading – Statement of reasons – Proportionality)

Full text in Portuguese . . . . . II - 709

**Application for:** annulment of the Commission's decision of 27 November 1992 imposing the disciplinary measure of downgrading on the applicant.

**Decision:** Decision annulled.

**Abstract of the Judgment**

Having obtained a period of leave at the end of October 1987, the applicant went to Lisbon, where he consulted a doctor, who, on 1 November 1987, issued him with a certificate attesting that he was ill and thus unfit for work for an indefinite period.

The certificate was authenticated by a Portuguese notary on 9 November 1987 and subsequently sent to the Commission by the applicant's wife.

By a decision of the Tribunal de Instrução Criminal of Lisbon, the applicant was remanded in custody from 3 November 1987 until 26 March 1988 and was held incommunicado until about 20 November 1987. The Portuguese court also ordered that a report on the applicant's period incommunicado be delivered within eight days, given that he was an employee of a Community institution.

On 18 December 1987 the Commission sent a telegram to the applicant's home in Portugal, requesting him to attend a verifying medical examination in Lisbon on 21 December. Being still detained on remand, the applicant did not do so.

Subsequently, at the request of the applicant's lawyer, the Portuguese court informed the Commission on 22 January 1988 that the applicant was detained on remand.

The Commission then decided to bring disciplinary proceedings against the applicant on the ground that he had made false declarations by justifying his absence from work on health grounds with the use of a medical certificate while in reality he was in detention. Whilst the Disciplinary Board proposed that the applicant be reprimanded, the appointing authority imposed downgrading, against which a complaint by the applicant remained unanswered.

### **The pleas alleging errors of fact and law**

The Court considers that the contested decision is vitiated by an error of fact, in that the Commission has not established that the applicant acted voluntarily and with premeditation (paragraphs 41 and 42).

The applicant might legitimately and in perfect good faith have thought that his employer would be informed of his position by the Portuguese authorities (paragraph 38).

The Court also takes the view that the contested decision is vitiated by an error of law. Contrary to what the Commission maintains, although the Staff Regulations provide that an official must notify his institution of his incapacity as soon as possible and state his present address, it does not follow that he is obliged to inform the institution personally, or through an intermediary designated by him for the purpose, in every case. The wording and the rationale of Article 59 of the Staff Regulations do not allow it to be interpreted as meaning that, if the person concerned has good grounds for believing that his institution will be informed by another certain and reliable method, he is obliged to communicate the information to his institution himself. As the applicant could legitimately think that the Portuguese police would inform the Commission, he did not fail to meet an obligation under the Staff Regulations during the period in question which expired on 18 December 1987 (paragraphs 43 and 44).

Because the two errors concern an essential aspect of the contested decision, namely that aspect on which the decision of the appointing authority departs in particular from the opinion given by the Disciplinary Board, the Court hereby annuls the decision (paragraph 45).

### **Operative part:**

**The Commission decision of 27 November 1992 is annulled.**